

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARK HOFFMAN,

Case No. 20-cv-13264

Plaintiff,

U.S. DISTRICT COURT JUDGE
GERSHWIN A. DRAIN

v.

JOHN HEMINGWAY ET AL.,

U.S. MAGISTRATE JUDGE
ANTHONY P. PATTI

Defendants.

**ORDER ACCEPTING AND ADOPTING REPORT AND
RECOMMENDATION [#24], GRANTING DEFENDANTS' MOTION TO
DISMISS IN PART AND SUBSTITUTE THE UNITED STATES AS THE
SOLE DEFENDANT [#11]**

On April 6, 2021, Defendants John Hemingway, Jason Berger, Samuel Queen, Charles Bradley, and Pamella Duncan (“Defendants”), filed a Motion to Dismiss Plaintiff Mark Hoffman’s Complaint pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure. ECF No. 11, PageID.52. Plaintiff alleges that Defendants violated his Eighth Amendment protection from cruel and unusual punishment related to a slip and fall incident at Plaintiff’s prison, and his subsequent medical care. *See* ECF No. 1, PageID.11. Plaintiff filed his Response to Defendants’ Motion on September 24, 2021, following United States Magistrate Judge Anthony P. Patti’s order to do so. *See* ECF No. 22. Defendants submitted their Reply on October 12, 2021. *See* ECF No. 23.

Presently before the Court is Magistrate Judge Patti's Report and Recommendation concerning Defendants' Motion to Dismiss. *See* ECF No. 24. Judge Patti recommends that this Court grant Defendants' Motion because Plaintiff fails to state a cognizable claim under the Eighth Amendment. ECF No. 24, PageID.1510. Neither party filed objections to the Report and Recommendation, and the opportunity to file objections has passed. FED. R. CIV. P. 72(b)(2).

When no objections are timely filed, a district court reviews a magistrate judge's report and recommendation for clear error. FED. R. CIV. P. 72, advisory committee note ("When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation."). The Court reviewed the Report and Recommendation and found no clear error.

Therefore, the Court ACCEPTS and ADOPTS Magistrate Judge Patti's Report and Recommendation [#24], as this Court's findings of fact and conclusions of law.

Defendants' Motion to Dismiss [#11] is GRANTED IN PART. Defendants John Hemingway, Jason Berger, Samuel Queen, Charles Bradley, and Pamella Duncan, are DISMISSED. Plaintiff's Eighth Amendment claims are DISMISSED.

IT IS FURTHER ORDERED that Plaintiff amend his Complaint by March 14, 2022, naming the United States as the sole defendant in this action on the Federal Tort Claims Act claim.

IT IS SO ORDERED.

Dated: February 22, 2022

/s/ Gershwin A. Drain
GERSHWIN A. DRAIN
U.S. DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on February 22, 2022, by electronic and/or ordinary mail.

/s/ Teresa McGovern
Case Manager